



IN THE MATTER OF:

Complainant,

and

Respondent.

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CHARGE NO: 1998SF0030
EEOC NO: 21B973173
ALS NO: S-10592

This matter comes to me on a motion by Respondent, Archer Daniels Midland, to lift the stay previously entered on May 13, 1999, and to dismiss the Complaint on grounds of res judicata. Complainant has filed a response, and Respondent has filed a reply. Accordingly, this matter is ripe for a decision.

Respondent contends that this case should be dismissed on the grounds of *res judicata* because the federal District Court dismissed with prejudice Complainant's similar Title VII discrimination action alleging the same facts as his Human Rights Act claim, and Complainant has exhausted his appeal rights challenging the District Court's dismissal order. Complainant, however, urges me to deny the motion to dismiss since the federal District Court wrongfully dismissed the federal case.

Based upon the record in this matter, I make the following findings of fact:

1. On July 10, 1997, Complainant filed a Charge of Discrimination alleging that Respondent subjected him to racial harassment in the workplace.

2. On September 16, 1998, the Department filed this Complaint on behalf of Complainant, alleging that Complainant was the victim of racial harassment in the workplace. Specifically, the Complaint alleged that Complainant was subjected to racial harassment in the form of threats and racial slurs by four co-workers at the work site.

3. On April 30, 1999, Complainant filed a motion to stay the Commission proceedings pending disposition of a parallel federal Title VII discrimination claim against Respondent, which, according to Complainant, alleged a similar cause of action and sought relief similar to his claim before the Commission. The text of the federal complaint alleged a racial harassment claim against Respondent and cited the same four co-workers mentioned in Complainant's Human Rights Act claim as the alleged culprits of the harassment. Complainant's stay motion was granted on May 13, 1999.

4. On February 1, 2000, Respondent filed a status report indicating that the parties had settled both the federal lawsuit and the instant claim under the Human Rights Act, and that the parties were working on the final details of a written agreement to memorialize their settlement.

5. On February 17, 2000, Respondent filed a motion to enforce the settlement agreement in federal court. In the motion, Respondent alleged that its counsel and counsel for Complainant orally agreed to settle both the federal and Human Rights Act claims for a sum certain, that counsel for Respondent drafted the agreement and full release of both claims, and that Complainant refused to sign the settlement papers.

6. On March 28, 2000, the District Court conducted an evidentiary hearing at which Complainant's attorney, Complainant and Respondent's counsel provided sworn testimony. Following the evidentiary hearing, the District Court directed the parties to provide additional authority on the issue concerning Watson's authority to bind Complainant to the settlement agreement.

7. On May 4, 2000, the District Court entered an order granting Respondent's motion to enforce settlement, after finding that Watson was acting on Complainant's behalf and had authority to enter into the oral settlement agreement. The court further directed the parties to submit final settlement documents within 21 days. Complainant thereafter filed a motion for reconsideration of the May 4, 2000 order.

8. On June 6, 2000, the District Court denied Complainant's motion for reconsideration. In this order, the District Court noted that Complainant failed to present evidence refuting the District Court's ultimate finding that Complainant's counsel had apparent, if not actual authority, to negotiate the settlement agreement on behalf of Complainant. The District Court directed Complainant to execute the settlement documents by June 20, 2000 and warned Complainant that his continued failure to do so would result in the issuance of an order to show cause why Complainant should not be held in contempt for his failure to abide by orders of the District Court.

9. On July 5, 2000, the District Court ordered Complainant to show cause why he should not be held in civil contempt or otherwise sanctioned for his continued refusal to abide by District Court orders. The District Court initially set a hearing on the matter for July 18, 2000, but rescheduled the hearing after the United States Marshals Service was unable to personally serve Complainant by that time.

10. On August 24, 2000, the District Court conducted a hearing on the rule to show cause, during which Complainant reconfirmed his intention not to sign the settlement documents. In an order entered on that same date, the District Court noted that:

"Mr. Britt selectively quotes portions of the evidentiary hearing out of context, ignores other portions of the testimony that did not support his case, and blatantly misconstrued both the evidence and the prior rulings of the Court. He further accuses the Court of dishonesty and racism, and indicates his refusal to obey the lawful orders of the Court and threatens violence to both the Court and opposing counsel by stating that he 'will exercise actions up to [and including] the use of deadly force'."

In the same order, the District Court dismissed with prejudice Complainant's discrimination claim due to Complainant's adamant and repeated refusal to comply with its orders.

11. On November 16, 2000 Complainant filed an appeal of the District Court's dismissal order to the Seventh Circuit United States Court of Appeals.

12. On February 2, 2001, the Seventh Circuit Court of Appeal dismissed Complainant's appeal.

Conclusions of Law

1. The doctrine of *res judicata* bars the re-litigation of a claim that a court of competent jurisdiction has decided on its merits in an earlier proceeding.

2. All requirements for application of *res judicata* are present where: (1) the parties to the action before the Human Rights Commission are the same parties in the federal action; (2) both cases arise out of the same set of facts; and (3) the dismissal order in the federal case constitutes an adjudication on the merits.

Determination

This matter should be dismissed with prejudice due to the fact that the federal court dismissed with prejudice Complainant's similar action alleging the same facts as the case before the Commission.

Discussion

This case presents the question regarding the appropriate treatment to be given when a federal court has dismissed with prejudice a similar Title VII discrimination claim alleging the same facts that are present in a claim before the Human Rights Commission. According to Respondent, dismissal of the instant cause of action on grounds of *res judicata* is required since the federal court's dismissal order constituted a decision on the merits. Complainant on the other hand contends that while he did tell his counsel to settle the federal action, he did so under duress due to his counsel's belated assessment that his discrimination claim was without merit, as well as counsel's threats to either quit as

Complainant's attorney or to charge Complainant "outrageous" prices for continuing his representation of Complainant. Complainant further submits that dismissal of this action would not be proper since his counsel never told him that a settlement of the federal action would also require the dismissal of his Human Rights Act claim or that the settlement terms would contain a confidentiality clause. However, after reviewing the pleadings and the relevant case law, I agree with Respondent that dismissal is warranted in this case.

In Hauversburk and Prudential Home Mortgage Co., ___ Ill. HRC Rep. ___ (1994SF0022, July 15, 1998), the Commission considered a similar question when a complainant attempted to proceed on her discrimination claim before the Commission after a federal court had dismissed a similar federal action against the respondent on grounds that the federal claim had not been timely filed. In arguing that the complainant's cause of action before the Commission should be dismissed on *res judicata* grounds, the respondent maintained that the complainant could not proceed on her Human Rights Act claim since the federal court's dismissal order constituted a final judgment on the merits of the complainant's identical federal action. In agreeing with the respondent, the Commission in Hauversburk observed that a federal court dismissal with prejudice is as conclusive of the rights of the parties as if the lawsuit had been prosecuted to a final adjudication adverse to the complainant. (See also, Bank of America v. Jorjorian, 303 Ill.App. 184, 185, 24 N.E.2d 896, 897 (1st Dist. 1940), and Keim v. Kalbfleisch, 57 Ill.App.3d 621, 373 N.E.2d 565, 568, 15 Ill.Dec. 219, 222 (5th Dist. 1978).) Moreover, the Commission determined that it did not matter that the federal court did not consider the merits of the complainant's case prior to entering the order dismissing her federal cause of action since the dismissal was one with prejudice. Hauversburk, Slip op. at p.5.

A similar result is required here. Complainant sought and was granted his request to stay this Human Rights Act claim on the basis that his federal Title VII and Human Rights Act claims were parallel actions seeking similar relief. Indeed, an examination of the federal and

the Human Rights Act claims indicates that both claims concern allegations of racial harassment in the form of unwelcome threats and racial slurs made during the same time frame by co-workers Henderson, Ballinger, Slayton and Moser. Thereafter, Complainant proceeded with his federal claim until the federal court entered an order dismissing Complainant's case with prejudice based on Complainant's failure to comply with its prior orders. Thus, under these circumstances, it appears that the doctrine of *res judicata* requires that Complainant's Human Rights Act claim be dismissed since: (1) Complainant and Respondent are the same parties in both the federal Title VII action and the instant Human Rights Act claim; (2) both lawsuits make allegations of racial harassment arising out of treatment given to Complainant by his co-workers; and (3) the federal court dismissal constitutes a final judgment on the merits. Indeed, Complainant has cited no legal precedent that would take this case outside the contours of either the doctrine of *res judicata* or the Commission's decision in Hauversburk.

Recommendation

For all of the above reasons, I recommend that the stay order entered on May 13, 1999 be lifted, and that the Complaint and underlying Charge of Discrimination of Danny L. Britt be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 7th DAY OF NOVEMBER, 2001.